



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,060	02/05/2002	Cory O. Nykoluk	26/1159US	8331

7590 04/14/2003

Clyde L. Smith
Thompson Coburn LLP
One Firststar Plaza, Suite 3500
St. Louis, CO 63101

EXAMINER

LUGO, CARLOS

ART UNIT	PAPER NUMBER
----------	--------------

3677

DATE MAILED: 04/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/068,060

Applicant(s)

NYKOLUK, CORY O.

Examiner

Carlos Lugo

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-11 is/are pending in the application.
- 4a) Of the above claim(s) 2 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to applicant's amendment filed on February 25, 2003.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1,3-9 and 11 are rejected** under 35 U.S.C. 102(b) as being anticipated by US Pat No 5,031,944 to Keyaki.

Regarding claims 1 and 8, Keyaki discloses a zipper-locking device comprising a zipper that is selectively adjustable between an open position and a closed position and having two rows of teeth.

A slider that is slidably connected to the rows of teeth such that the slider can moves between a first and a second position along the rows of teeth. The slider further includes a main body (20) and a first loop (24).

A locking member (21 and 25) is operatively connected to the zipper. The locking member includes a second loop (25).

The first loop is configure to be at least partially passable thought the second loop (Figure 7), when the slider is in the second position and being configured and adapted to allow a bolt (30) of a lock (26 and 27) to be positioned extending there through. The second loop being configured and adapted to prevent the passage of

Art Unit: 3677

the first loop through the second loop when the bolt of the lock is positioned extending through the first loop such that the movement of the slider towards the first position is limited when the bolt of the lock is positioned extending through the first loop.

As to claim 3, Keyaki discloses that the loop of the locking member is rigid.

As to claims 4 and 9, Keyaki discloses that the loop of the slider is integrally formed as a monolithic piece together with the main body of the slider.

As to claim 5, Keyaki discloses that the slider includes a pull loop and a pull-tab. The pull-tab is pivotally connected to the pull loop of the slider in such manner that the pull-tab is movable relative to the main body of the slider.

As to claim 6, Keyaki discloses that the loop of the slider is a closed loop.

As to claims 7 and 11, Keyaki discloses that the zipper-locking device is on a piece of baggage.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1,3,6-8 and 11 are rejected** under 35 U.S.C. 102(b) as being anticipated by US Pat No 2,569,076 to Schaye.

Regarding claims 1 and 8, Schaye discloses a zipper-locking device comprising a zipper that is selectively adjustable between an open position and a closed position and having two rows of teeth.

A slider that is slidably connected to the rows of teeth such that the slider can moves between a first and a second position along the rows of teeth. The slider further includes a main body and a first loop (54).

A locking member (40,44 and 50) is operatively connected to the zipper. The locking member includes a second loop (formed by 40 and 44).

However, Schaye fails to disclose that the first loop is adapted to pass through the second loop. Schaye discloses that the second loop pass through the first loop.

The reversal of components in a prior art reference, where there is no disclosed significance to such reversal, is a design consideration within the skill of the art. In re Gazda, 219 F.2d 449, 104 USPQ 400 (CCPA 1955); In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

The fact that the first loop is adapted to pass through the second loop is not considered as a limitation. It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to reverse the components (loops) in order to have the first loop

Art Unit: 3677

passing through the second loop, because it is just a reversal of parts that will not affect the locking of the embodiment.

As to claim 3, Schaye discloses that the loop of the locking member is rigid.

As to claim 6, Schaye discloses that the loop of the slider is a closed loop.

As to claims 7 and 11, Schaye discloses that the zipper-locking device is on a piece of baggage.

6. **Claim 10 is rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 5,031,944 to Keyaki in view of US Pat No 1,845,088 to Hunnerhoff.

Keyaki fails to disclose that the loop of the locking member pivots about an axis relative to the zipper. Keyaki discloses that the loop (25) of the locking member (21) is rigid.

Hunnerhoff illustrates that is known in the art that a loop of the locking member pivots about an axis relative to a zipper (Figure 4).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the loop of the locking member pivoting about an axis relative to the zipper, as taught by Hunnerhoff, into a zipper locking device as described by Keyaki, in order to give a better way to engage the loop at the slider with the loop of the locking member.

Response to Arguments

7. Applicant's arguments filed on February 25, 2003 have been fully considered but they are not persuasive.

Regarding applicant's arguments that Schaye fails to disclose that "the first loop being adapted and configured to be at least partially passable through the second loop when the slider is in the second position", as claimed in claim 1, and that fails to disclose the step of "passing at least a portion of the first loop through the second loop when the slider is in the second position", as claimed in claim 8 (Page 6 Line 17 to Page 7 Line 12), Schaye discloses the invention as claimed.

Applicant is reminded that the reversal of components in a prior art reference, where there is no disclosed significance to such reversal, is a design consideration within the skill of the art. In re Gazda, 219 F.2d 449, 104 USPQ 400 (CCPA 1955); In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950).

Also, the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

As to applicant's arguments that Keyaki fails to disclose that "the first loop being adapted and configured to be at least partially passable through the second loop when the slider is in the second position", as claimed in claim 1, and that fails to disclose the step of "passing at least a portion of the first loop through the second loop when the slider is in the second position", as claimed in claim 8 (Page 7 Line 13 to Page 8 Line 12), Keyaki discloses and illustrates the invention as claimed.

Keyaki in Figure 7 clearly illustrates that the first loop (24) pass through the second loop (25).

As to applicant's arguments that Hunnerhoff fails to disclose that "the first loop being adapted and configured to be at least partially passable through the second loop when the slider is in the second position", as claimed in claim 1, and that fails to disclose the step of "passing at least a portion of the first loop through the second loop when the slider is in the second position", as claimed in claim 8 (Page 8 Line 13), Hunnerhoff does not need to show these limitations because Keyaki already shows them. Hunnerhoff is used to teach that is known in the art that a loop of the locking member pivots about an axis relative to a zipper.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo. The examiner phone number is (703)-305-9747. The fax number for correspondence before a final action is (703)-872-

Art Unit: 3677

9326 and the fax number for correspondence after final action is (703)-872-9327.

The email direction of the examiner is carlos.lugo@uspto.gov. The examiner can normally be reached on Monday to Friday from 9:30am to 6:30pm (EST). If the examiner is not available, please leave a message, including the application number and the examiner will answer the message as soon as possible.

April 10, 2003



WILLIAM MILLER
PRIMARY